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JUL 31 2014
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PER _____
DEPUTY CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

JOHN LEGRAND,

Plaintiff,

v.

UNITED STATES OF AMERICA, et al.,

Defendants.

CIVIL ACTION NO. 3:12-CV-743

(Judge Kosik)

MEMORANDUM AND ORDER

AND NOW, this 31st day of July, 2014, IT APPEARING TO THE COURT THAT:

(1) Plaintiff, John Legrand, a prisoner formerly confined at the United States Penitentiary-Canaan, Waymart, Pennsylvania¹, filed the instant Bivens² civil rights action pursuant to 28 U.S.C. §1331 on April 20, 2012. The action was also brought pursuant to the Federal Tort Claims Act, 28 U.S.C. §2675, et seq. (Doc. 2);

(2) The action was based on the alleged negligence of the prison in serving fajitas that contained salmonella bacteria;

(3) The action was assigned to Magistrate Judge Martin C. Carlson for Report and Recommendation;

(4) After an extensive procedural history, including efforts at mediation³, the Defendants filed a Motion for Partial Summary Judgment, or in the alternative, Motion for Partial Dismissal, as to the Bivens claim (Doc. 89) and a Brief in Support

¹Plaintiff Legrand is currently confined at the United States Penitentiary- Coleman, Coleman, Florida.

² Bivens v. Six Unknown Named Federal Narcotics Agents, 403 U.S. 388 (1971).

³The instant action involved six (6) Plaintiffs, including Plaintiff Legrand. We note that the other five (5) plaintiffs settled their cases through mediation and have been terminated from this action (Docs. 115, 121, 166). Plaintiff Legrand is the only remaining Plaintiff.

thereof (Doc. 170). The Defendants also filed an Answer as to the Federal Tort Claims Act claim (Doc. 180);

(5) Plaintiff filed a Motion for Leave to File an Amended Complaint (Doc. 182) and Defendants filed a Brief in Opposition to the Motion (Doc. 188);

(6) On June 19, 2014, the Magistrate Judge filed a Report and Recommendation (Doc. 191), wherein he recommended that Plaintiff Legrand's Motion for Leave to File an Amended Complaint (Doc. 182) be denied;

(7) On June 19, 2014, the Magistrate Judge also issued a Report and Recommendation (Doc. 192), wherein he recommended that Defendant's Motion for Partial Summary Judgment, or in the alternative, Motion for Partial Dismissal, be granted as to the Bivens claims in accordance with Local Rule 7.6, Fed. R. Civ. P. 41(b) and Poulis v. State Farm Fire and Cas. Co., 747 F. 2d 863, 868 (3d Cir. 1984), on the basis of Plaintiff's failure to comply with a court Order, failure to prosecute his action, and failure to exhaust;

(8) Plaintiff has failed to file timely objections to the Magistrate Judge's Reports and Recommendations;

AND, IT FURTHER APPEARING THAT:

(9) If no objections are filed to a Magistrate Judge's Report and Recommendation, the plaintiff is not statutorily entitled to a de novo review of his claims. 28 U.S.C.A. §636(b)(1)(C); Thomas v. Am., 474 U.S. 140, 150-53 (1985). Nonetheless, the usual practice of the district court is to give "reasoned consideration" to a magistrate judge's report prior to adopting it. Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987);

(10) We have considered the Magistrate Judge's Reports and we concur with his recommendations;

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated June 19, 2014 (Doc. 191) is **ADOPTED**;

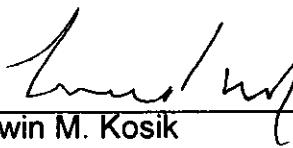
(2) The Report and Recommendation of Magistrate Judge Martin C. Carlson dated June 19, 2014 (Doc. 192) is **ADOPTED**;

(3) The Plaintiff's Motion for Leave to File an Amended Complaint (Doc. 182) is **DENIED**;

(4) The Defendant's Motion for Partial Summary Judgment or in the alternative, Motion for Partial Dismissal, as to the Bivens claim (Doc. 89) is **GRANTED**;

(5) Defendants, Fenstermaker, Sadowski, Holt, Breckon, Ryan and Poane are **DISMISSED** from this action; and

(6) The above-captioned action is **REMANDED** to the Magistrate Judge for further proceedings.



Edwin M. Kosik
United States District Judge